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Balancing National Security and Open Investment: Comparative Study on America's Foreign Investment Screening Regulation for Indonesia's Potential Adaptation

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Abstract:
This study explores the delicate balance between national security and economic openness in the context of foreign direct investment (FDI), focusing on how Indonesia can potentially adopt a screening mechanism inspired by the United States' regulatory framework. Using a comparative legal approach, this research analyzes the U.S. Foreign Investment Risk Review Modernization Act (FIRRMA) and the role of the Committee on Foreign Investment in the United States (CFIUS) as a model for assessing foreign investment that may pose national security risks. The study investigates key elements of FIRRMA, such as the scope of covered transactions, strategic sectors, and the national security review process. These aspects are then examined against Indonesia's current regulatory landscape, highlighting existing gaps in investment screening, especially in sectors critical to national sovereignty and data security. The findings suggest that while Indonesia promotes an open investment climate, the absence of a structured and centralized foreign investment review mechanism exposes the country to vulnerabilities in strategic industries. The paper argues for a context-sensitive adaptation of the U.S. model, proposing a more robust and preventive screening system that upholds national security without discouraging foreign capital inflows. This study contributes to the growing discourse on legal harmonization and institutional readiness in safeguarding national interests amid globalization.

Keywords: *National Security, Foreign Direct Investment, Investment Screening, Comparative Law, Legal Adaptation*

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INTRODUCTION

In the past decade, literature on FDI screening has shown a significant increase, both in terms of the number of countries adopting screening mechanisms and the complexity of their criteria (UNCTAD, 2023). The PRISM study by Nunn and Behl (2022) recorded an expansion of screening mechanisms in 38 OECD countries between 2007 and 2021, indicating an increased focus on sectors involving Technological Value-Added Risk (PRISM dataset, 2022). OECD's 2024 analysis highlights the critical contribution of FDI screening to the Foreign Direct Investment Regulatory Restrictiveness Index (FDIRRI), particularly regarding equity shares and risk-based approvals. In Southeast Asia, a case study on Indonesia by Ginting et al. (2024) revealed that institutional factors and domestic regulations play a crucial role in attracting FDI, with varying impacts across industrial sectors. Furthermore, Faruq (2023),

through panel data analysis in emerging Asian countries, confirmed that political stability and institutional quality have a significant positive influence on FDI inflows.

The potential benefits of FDI do not come without their own risks. According to Joseph E. Stiglitz (2002) in his book *Globalization and its Discontents*, foreign investment can provide benefits such as creating job opportunities, encouraging the transfer of new technology, and increasing market competition. Therefore, foreign investment regulations should focus on facilitating such investment. However, this view contrasts with Dani Rodrik (2011) in his book *The Globalization Paradox*, who argues that foreign investment is not always entirely beneficial for the host country because it can pose risks of foreign companies controlling critical infrastructure and technology. Therefore, adequate regulations must be implemented as a protective measure against potentially harmful foreign investment.

As global competition for attracting Foreign Direct Investment (FDI) intensifies, many countries have strengthened their screening frameworks to safeguard national security (Terán, 2024). According to global analyses, the number of countries implementing or updating national security-based FDI screening mechanisms has increased significantly since 2018, targeting various strategic sectors while expanding the scope and depth of assessments (Unier et al., 2021; OECD, 2022). Comparative studies of screening systems in Australia, Japan, and the United States highlight risk-based approaches and advanced technology protections—such as the Foreign Acquisitions and Takeovers Act (FATA) in Australia and the Foreign Exchange and Foreign Trade Act (FEFTA) in Japan—designed to prevent the infiltration of sensitive technologies and disruptions to strategic supply chains (White & Case, 2024; Tsuchiya, 2024). Uribe Terán (2024) also notes that the objective of screening mechanisms extends beyond facilitating investment, aiming to ensure sustainability and development by considering trade and domestic political dynamics. Meanwhile, Reich and Klotsman (2025) observe that Israel's screening regime still faces challenges in transparency and statutory regulation.

In Indonesia, FDI has been a crucial component of economic development over the past decades. Indonesia itself has a significant average annual inflow of foreign investment, with a notable increase in recent years. In 2024, Indonesia's FDI reached USD 55.33 billion, or 900.2 trillion Rupiah, marking a 21% increase compared to the previous year. This growth is largely due to investments in sectors such as mining and metal processing following Indonesia's ban on nickel ore exports to encourage domestic processing.

While recognizing these economic benefits, Indonesia is also cautious that foreign investment can harm the economy, such as creating economic dominance by and dependence on foreign investment. Therefore, Indonesia has established a national foreign investment regulatory framework through Presidential Regulation No. 10 of 2021 concerning Business Fields for Investment, which seeks to limit foreign investment in certain business sectors with what is called the "Positive Investment List." This Presidential Regulation is an implementing regulation that directly derives from the revision of Law No. 25 of 2007 concerning Investment, as amended by Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law.

Through this policy, Indonesia seeks to find a balance between a foreign investment-friendly climate while opposing foreign investment that harms national security. An

investment-friendly climate can be interpreted as a condition in which the government creates a conducive environment for investors through stable fiscal and monetary policies, ease of licensing, legal certainty, and attractive incentives, thus increasing investor confidence and driving national economic growth. On the other hand, national security in the context of foreign investment refers to efforts by the state to protect strategic interests such as control over critical infrastructure, vital industries, sensitive technology, and crucial natural resources, so that they do not fall into foreign hands that could threaten sovereignty, stability, or national interests.

However, the implementation of foreign investment policy in Indonesia has been hindered by uncertainty in its regulatory framework. During President Joko Widodo's administration, these uncertainties have persisted, partly due to deregulation efforts aimed at rapid economic growth. Such measures may have made it harder to address the underlying issues. To ensure that foreign investments are managed in the right way, a robust and effective regulatory framework is essential. Therefore, establishing a strong regulatory framework is critical for safeguarding national security while maintaining an open investment environment.

This is further evidenced by the fact that Indonesia does not yet have comprehensive provisions regarding national security considerations in the context of foreign investment in its legislation. Although the Investment Law regulates various aspects of foreign investment, there is no foreign investment screening mechanism that specifically considers national security aspects as has been implemented in other countries such as the United States with CFIUS (Committee on Foreign Investment in the United States) or Australia with FIRB (Foreign Investment Review Board). This is a weakness in Indonesia's investment legal system, as the government does not have a strong legal basis to reject foreign investment that could threaten national security, especially in strategic sectors such as critical infrastructure, sensitive technology, and vital natural resources.

Uncertainty in the regulatory framework for managing incoming foreign investment will make it difficult for Indonesia to ensure that foreign investment aligns with national security. This lack of clarity can deter potential investors due to perceived risks and regulatory outcome uncertainty. To address these concerns, Indonesia needs to build a stronger and more transparent regulatory framework that includes a foreign investment screening mechanism. Comparative analysis with the Committee on Foreign Investment in the United States ("CFIUS") model in the United States can provide valuable insights. CFIUS has been effective in balancing national security interests with the need for open investment policies, demonstrating how a well-structured screening mechanism can enhance legal certainty and protect national interests. By adopting a similar approach, Indonesia can better manage foreign investment, ensuring positive contributions to economic development while protecting strategic sectors.

This paper emphasizes a comparative approach to analyze the potential adaptation of a formal regulatory framework/mechanism for foreign direct investment screening (FDI Screening) that could be implemented by Indonesia, by comparing it with the United States. The United States has an established framework through the Committee on Foreign Investment in the United States (CFIUS), which provides a strong model for balancing national security interests while maintaining an open investment policy for the country. By examining the

framework implemented there, this study aims to generate insights on how Indonesia can adapt a similar mechanism to protect national security without sacrificing a friendly investment climate. This comparative analysis will explore how Indonesia can adjust its regulatory approach to align with its unique economic and strategic priorities, as well as potentially draw lessons from the U.S. model to create a more effective and transparent FDI screening process.

Foreign Direct Investment (FDI) plays a pivotal role in economic development, yet its implications for national security have become a growing concern globally. Previous studies, such as those by Sauvant and Sachs (2009), highlight the dual nature of FDI, emphasizing its potential to spur growth while posing risks to host countries' strategic sectors. Research by Evenett and Fritz (2021) further underscores the increasing adoption of FDI screening mechanisms, particularly in developed economies like the U.S., to mitigate threats to critical infrastructure and sensitive technologies. However, much of the existing literature focuses on Western contexts, leaving a gap in understanding how emerging economies like Indonesia can adapt such frameworks to their unique regulatory and economic landscapes. This gap is critical, as Indonesia's FDI inflows continue to rise, reaching USD 55.33 billion in 2024, without a robust national security screening mechanism in place.

The research gap lies in the lack of comparative studies examining Indonesia's potential to adopt a structured FDI screening system akin to the U.S. Committee on Foreign Investment in the United States (CFIUS). While studies like those by UNCTAD (2023) and the OECD (2022) discuss global trends in FDI screening, few address the institutional and legal challenges faced by developing nations in implementing such systems. Indonesia's current framework, the Online Single Submission Risk-Based Approach (OSS RBA), focuses primarily on administrative and environmental risks, neglecting national security considerations. This omission leaves strategic sectors—such as energy, telecommunications, and defense—vulnerable to foreign control, as noted by Warburton and Aspinall (2023). Addressing this gap is urgent, given Indonesia's geopolitical significance and its ambition to attract high-quality FDI while safeguarding sovereignty.

The urgency of this research stems from Indonesia's rapid economic integration and the escalating global competition for strategic investments. Recent geopolitical tensions, such as the U.S.-China trade war and supply chain disruptions, have heightened the need for countries to protect critical assets. Indonesia's reliance on FDI for infrastructure and technology development, coupled with its deregulatory approach under the Omnibus Law, further amplifies vulnerabilities. Without a formal screening mechanism, Indonesia risks ceding control over vital sectors, as warned by the World Bank (2022). This study addresses this urgency by proposing actionable reforms, drawing lessons from the CFIUS model to balance economic openness with national security.

The novelty of this research lies in its comparative analysis of the U.S. CFIUS framework and Indonesia's OSS RBA system, offering context-specific adaptations for an emerging economy. Unlike prior studies that focus on theoretical or unilateral approaches, this study integrates empirical insights from Indonesia's regulatory environment and global best practices. It also introduces a multi-agency coordination model, tailored mitigation measures, and transparency protocols—innovations absent in Indonesia's current framework. By bridging

the gap between theory and practice, this research contributes to the discourse on legal harmonization and institutional design in FDI governance.

The purpose of this study is to evaluate how Indonesia can integrate national security considerations into its FDI screening process without stifling investment. By analyzing the CFIUS model's key features—such as mandatory filings, interagency collaboration, and risk-based assessments—the research aims to propose a hybrid framework suited to Indonesia's needs. The benefits are twofold: enhancing Indonesia's capacity to protect strategic assets while maintaining investor confidence. Policymakers, regulators, and scholars stand to gain from this research, which provides a blueprint for aligning FDI policies with national security priorities in an era of economic uncertainty.

RESEARCH METHOD

The type of research used in this study is normative juridical law research with a regulatory approach, business law, and a comparative approach. *Juridical law research* is legal research with literature studies that are carried out by examining literature materials or secondary data. A comparative approach was used to analyze the potential adaptation of the use of the foreign investment screening system based on the comparison made with the United States *CFIUS*. The data collection technique used is a literature study by tracing legal materials, both primary, secondary, and tertiary. The data analysis technique used in this study is qualitative juridical analysis in the form of classifying data obtained from legal sources that are the object of research. The results of the analysis are described descriptively in association with the problems raised in this study.

The data population consists of primary legal documents, including Indonesian investment laws (Law No. 25/2007, Omnibus Law No. 6/2023, Presidential Regulation No. 10/2021), U.S. legislation (FIRRMA 2018, FINSA 2007), and secondary data from academic journals, government reports, and international organization publications (OECD, UNCTAD, World Bank). The data sample focuses specifically on provisions related to national security screening mechanisms in both countries, with purposive sampling used to select the most relevant legal texts and case studies (e.g., blocked transactions under *CFIUS*). Research instruments include document analysis templates for systematic comparison of legal provisions and semi-structured interview guides for expert consultations with Indonesian policymakers and investment law practitioners.

To ensure comprehensive analysis, the study utilizes content analysis techniques to examine legal texts and thematic analysis for qualitative data from interviews. The sampling technique combines criterion-based selection of legal documents with snowball sampling for expert interviews, targeting officials from *BKPM* (Indonesia Investment Coordinating Board), Ministry of Investment, and legal scholars specializing in investment law. Data triangulation is employed by cross-verifying findings from document analysis, expert interviews, and case study examination. The research instruments are validated through peer review by investment law experts and pilot testing of the interview protocol. This methodological approach allows for systematic comparison of regulatory frameworks while capturing contextual insights from Indonesian stakeholders regarding practical implementation challenges.

RESULTH AND DISCUSSION

Indonesian Law's Regulation on Foreign Investment Screening Based on the Grounds of National Security

National security in investment refers to the regulatory mechanisms governments employ to scrutinize Foreign Direct Investment ("FDI") that may threaten critical infrastructure, strategic sectors, or sensitive technologies. This concept has gained prominence as globalization intensifies, with states balancing economic openness against vulnerabilities posed by foreign control of assets vital to sovereignty. Such concept is known in the world of FDI by the name of screening. A "risk-based assessment to prevent foreign investments from undermining a nation's defense, public order, or technological leadership. For instance, big countries like the U.S. and Japan have institutionalized frameworks to evaluate FDI through lenses like cybersecurity, data privacy, and supply chain resilience.

What about Indonesia? Indonesia's perspective on national security in investment is shaped by the dual imperatives of economic growth and the protection of strategic interests. While Indonesia has actively pursued FDI as a mean to accelerate economic development and technological advancement, concerns about national security, particularly control over critical infrastructure, resources, and sensitive information have become increasingly prominent in policy debates. The Indonesian Government recognizes that unchecked foreign investment could lead to vulnerabilities, such as excessive foreign control over strategic assets or exposure of sensitive data, which could undermine both sovereignty and national resilience.

Despite these concerns, Indonesia does not yet have a formally acknowledged, comprehensive screening mechanism for foreign investment based on national security grounds. There are a few notable regulations concerning FDI in Indonesia. The principal legal framework governing FDI is Law No.25 of 2007 on Investment As Revised with Law no. 6 of 2023 on Stipulation of Government Regulation in Lieu of Law Number 2 Year 2022 Regarding Job Creation to Become Law, which mandates that the government regulate which sectors are open, restricted, or closed to foreign investment (narcotics & gambling), through article taking into account factors such as public order and national interest. As a result, the government retains broad discretion to reject or restrict foreign investment in certain sectors, but this discretion is exercised on a case-by-case basis and lacks procedural transparency.

In 2020, the Government passed a number of implementing regulations that aim to improve the number of Foreign Investment through the enactment of Law No. 11 of 2020 on Job Creation or so called "Omnibus Law" (Now known as Law no. 6 of 2023 on Stipulation of Government Regulation in Lieu of Law Number 2 Year 2022 Regarding Job Creation to Become Law). This new investment regime includes the adoption of new lists on investment that are closed or conditionally open to foreign investment as enlisted under the Presidential Regulation No 10 of 2021 which was amended by Presidential Regulation No. 49 of 2021 in the "Positive Investment List" (previously a Negative Investment list). This change aimed to liberalize the investment climate to attract more FDI by reducing barriers. However, these reforms have also raised concerns about the adequacy of safeguards for national security, as many previously restricted sectors including those related to infrastructure, mining, and telecommunications are now more accessible to foreign investors.

According to Presidential Regulation No 10 of 2021 on Investment Lines of Business (" Perpres 10/2021"), there are currently 69 business sectors that are closed to foreign investment as they are specifically designated for SMEs, such as traditional businesses or businesses that do not require a substantial amount of capital, examples of this being the rattan industry, the traditional clothes industry, and photocopy stores. In addition, there are 26 business sectors that are partially restricted for foreign investment in that they be owned by 100 percent domestic capital or foreign investment is limited to a

certain maximum percentage. Examples include shipping (maximum 49% foreign investment), air transportation (maximum 49% foreign investment), courier services (maximum 49 % foreign investment) and media (100% domestic investment at the time of establishment and maximum 20% foreign investment for capital increase or business expansion after the establishment). Except for those closed and restricted business sectors, all other business sectors are open with no restriction on foreign investment

As a comparison, under the old Negative List, which was regulated under Presidential Regulation No. 44 of 2016 ("Perpres 44/2016"), there were 163 and 228 lines of businesses that were fully closed and partially closed to foreign investment, respectively. Based on this number, Perpres 10/2021 reduces the lines of businesses that were closed or partially closed to foreign investment under the Perpres 44/2016 by approximately 75%. Truth be seen, Perpres 10/2021 significantly reduces the number of lines of business in various sectors in which foreign shareholding was limited under the 2016 Negative Investment List. Among others, the following lines of business (which often attracts foreign investors) are not included in Attachment III to Perpres 10/2021. Therefore, arguably, they should be open to 100% foreign shareholdings under Perpres 10/2021 when it comes into effect:

- Oil and gas construction services
- Oil and gas support services
- small-scale power plants with a capacity of 1 – 10 MW
- power plants with a capacity of > 10 MW
- geothermal power plants with a capacity of ≤ 10 MW
- operation and maintenance of electric power installations
- department stores with a sales floor area 400m2 – 2,000m2
- warehousing
- provision of security guards, money and valuable goods transportation guards, security services using animals
- private hospitals
- distribution of medical equipment
- pest control/fumigation services.

In line with the notable changes introduced by the Omnibus Law is the adoption of a risk-based licensing as regulated under the Government Regulation No.5 of 2021 on the Implementation of Risk-Based Licensing. Based on this regulation, business lines or activities are divided into four main categories based on their risk level (low, medium-low, medium-high, and high). Each category entails different licensing requirements and certain conditions for a company to fulfil. Whilst the OSS RBA is closest known to a screening method, it has not been formally acknowledged as a foreign investment screening method by international institutions like the OECD.

Under the OSS RBA, business activities are categorized into four risk levels: low, medium-low, medium-high, and high. The licensing requirements become progressively stricter as the risk level increases. For instance, low-risk businesses only need to obtain a Business Identification Number (Nomor Induk Berusaha/NIB), which can be issued almost automatically. Medium-low and medium-high risk businesses require additional standard certificates, while high-risk businesses such as those in manufacturing, mining, or foreign-owned companies (PT PMA) must secure a full suite of licenses, including sectoral permits, environmental impact assessments (AMDAL), and other technical approvals from relevant ministries or agencies. The OSS RBA system is also linked to other government databases, such as the Ministry of Law and Human Rights for deed verification and the tax office for taxpayer registration, further streamlining compliance

The OSS RBA mechanism is designed to be user-friendly, transparent, and efficient, offering real-time updates and clear guidance for applicants. It has been particularly effective in supporting micro, small, and medium enterprises (MSMEs), as low-risk businesses can self-declare and receive licenses quickly, reducing bureaucratic barriers and encouraging formalization. For higher-risk and foreign-invested businesses, the system imposes more thorough document verification and validation, reflecting the greater potential impact of these activities on public safety, environmental sustainability, and regulatory compliance.

While the OSS RBA system represents a significant step forward in simplifying and digitizing Indonesia's business licensing regime, its current scope of screening remains insufficient, particularly in the context of national security. As highlighted in the World Bank's 2022 review, the OSS RBA primarily evaluates risks based on safety, health, environmental impact, and the management of natural resources, without integrating national security considerations into its assessment criteria. This omission is critical, as global best practices increasingly recognize the importance of screening foreign investments not only for economic and administrative compliance but also for potential threats to national security.

The absence of national security as a formal component in Indonesia's investment screening framework contrasts with the approach taken by many other jurisdictions, where dedicated mechanisms have been established to address these risks. According to UNCTAD, at least 28 countries have implemented distinct national security-related screening mechanisms, and the number of FDI transactions blocked for security reasons has risen sharply in recent years. These mechanisms allow governments to assess whether foreign investments could lead to undue foreign influence over critical infrastructure, sensitive technologies, or strategic resources areas that are increasingly targeted in the context of geopolitical competition.

Incorporating national security considerations into the OSS RBA or establishing a parallel, dedicated screening body would not only align Indonesia with international best practices but also provide legal certainty and predictability for both investors and regulators. Hence, taking the United States' CFIUS as a comparative subject for Indonesia is particularly relevant, as CFIUS represents one of the most established and adaptive models for balancing national security with economic openness in foreign investment screening. As Indonesia seeks to develop a more robust and internationally aligned investment screening mechanism, studying the CFIUS process provides valuable insights into legal frameworks, interagency coordination, and risk-based approaches that can help Indonesia safeguard its strategic interests without undermining its appeal to foreign investors.

United States Legislative Developments on FDI Screening Regime Based off National Security

According to UNCTAD's World Investment Report 2024, The United States is both the world's largest foreign direct investor and the largest beneficiary of foreign direct investment with a total of USD 311 billion in FDI inflows (FDI). Making the integrity and security of its investment environment a matter of national importance. Over the past several decades, United States has progressively developed a robust legislative regime to screen foreign investments on national security grounds, reflecting evolving concerns over critical infrastructure, sensitive technologies, and the potential influence of foreign governments.

The cornerstone of this regime is the Committee on Foreign Investment in the United States (CFIUS), an interagency body established by executive order in 1975, with the CFIUS, United States became the first country to ever practice National Security review of FDI. Later in 1988, due to mounting concerns of potential Japanese acquisitions of particular U.S. firms, President Reagan

expanded the powers of CFIUS by passing the Omnibus Trade and Competitiveness Act of 1988, namely the Exon-Florio Amendment of 1988. Within the amendment, CFIUS was granted broader authority to review, investigate and recommend the suspension or prohibition of foreign acquisitions that may threaten to impair national security. The Exon-Florio provision also granted the U.S President with the ability to bar "mergers, acquisitions, or takeovers of persons engaged in interstate commerce in the United States that threaten to impair the national security "so long as other U.S. laws are inadequate or inappropriate to protect the national security". From a practical perspective, the Exon-Florio provision permits a review of proposed and completed transactions, and there is no limit to the timing window in which the President may authorize an investigation of a specific transaction.

The legislative framework was further refined by the Foreign Investment and National Security Act (FINSA) of 2007, which codified CFIUS's procedures and explicitly articulated the dual objectives of safeguarding national security while promoting foreign investment, which codified CFIUS's procedures and explicitly articulated the dual objectives of safeguarding national security while promoting foreign investment. Most recently, in response to rapidly changing technological and Geopolitical landscapes, the Foreign Investment Risk Review Modernization Act ("FIRRMA") of 2018 significantly expanded CFIUS's jurisdiction. FIRRMA broadened the scope of transactions subject to review, including not only acquisitions but also certain non-controlling investments, real estate transactions near sensitive government facilities, and any arrangements designed to circumvent CFIUS oversight. The Act also introduced streamlined filing procedures, extended review timelines, and strengthened the use of mitigation agreements to address national security risks without unnecessarily deterring beneficial investment.

The process of screening mechanism was also significantly updated by the Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018. In addition with the updates, the Committee on Foreign Investment in the United States (CFIUS) review process can be triggered either voluntarily by the parties to a transaction or unilaterally by CFIUS itself if it identifies a transaction that may pose national security concerns. The process begins with the submission of either a short form declaration with basic information or a full notice. This process remains mostly voluntary in order to receive a potential "safe harbor" letter which limits CFIUS from subsequently initiating a review of a transaction except in certain limited circumstances. If it is determined that there is a potential risks, CFIUS will take the screening to the second step, a 45-day national security review.

The second step of review formally starts with CFIUS accepting the notice and notifying the parties of the review period. The initial review period lasts up to 45 days, during which CFIUS evaluates whether the transaction is a "covered transaction" and assesses potential national security risks. At any time during the review or investigation period, parties must respond to follow up requests for information within three business days of the request or within a longer time frame if the parties request so and the staff chairperson grants that request.

In the event that the CFIUS founds further risks is warranted, it initiates the third step, which is a 45 day Investigation period, which may be extended by an additional 15 days in extraordinary circumstances. During this stage, mitigation agreements may be developed to bring the transaction's risks within acceptable levels for achieving CFIUS compliance. Under FIRRMA, CFIUS may: (1) negotiate, enter into or impose, and enforce any agreement or condition with any party to an investment transaction during and after consideration of a transaction to mitigate any risk to the national security of the United States as a result of the transaction; and (2) review periodically the appropriateness of an agreement or condition and terminate, phase out, or otherwise amend the agreement or condition if a threat no longer requires mitigation through the agreement or condition.

If, after the investigation, CFIUS concludes that the transaction poses unresolved national security concerns that cannot be mitigated by conditions or agreements, it refers the matter to the President for the Presidential Review. The President then has 15 days to decide whether to block, allow, or impose further conditions on the transaction. The President's decision is final and not subject to judicial review. Throughout the creation of CFIUS, the Presidents has only blocked five foreign investment transactions under the base of national security.

One such case was the attempted acquisition of Special Metals Corp. ("Special Metals") by the Japanese firm Nippon Steel Corp. ("Nippon"). Special Metals, a U.S. firm that specialized in the production of particular metallic elements that could be used in military aircrafts such as the F-15, provided work for an American defense agency that oversaw military research.12 Despite Japan having the technological competence to produce the F-15, due to having previously purchased the aircraft from the U.S., the Defense Committee claimed that Japanese scientists could acquire sensitive knowledge as a result of the transaction and therefore brought a claim before CFIUS urging for a review of the acquisition.13 Upon learning that the proposed transaction had become controversial, Nippon withdrew their interest in negotiating a deal.

Throughout the process, CFIUS applies whats so called the risk-based analysis, considering factors such as the nature of the U.S. business, the identity and intentions of the foreign investor, the potential for technology transfer, and the implications for critical infrastructure and data security. The outcomes of the CFIUS review can be: (1) clearance of the transaction without conditions, (2) clearance with mitigation measures imposed, or (3) blocking or unwinding of the transaction if national security threats are deemed unmanageable.

Indonesia can draw several important lessons from the United States' CFIUS regulatory screening mechanism, particularly in the context of national security, while still maintaining an open investment climate. A central feature of CFIUS is its ability to adapt to evolving threats. The passage of the Foreign Investment Risk Review Modernization Act (FIRRMA) in 2018 expanded CFIUS's jurisdiction to include not only controlling but also certain non-controlling investments, as well as real estate transactions near sensitive sites CFIUS employs both mandatory and voluntary filing procedures, clear timelines, and the use of mitigation agreements such as limiting access to sensitive technology or requiring data localization rather than outright prohibitions. This provides legal certainty and predictability for investors, while giving the government flexibility to address specific risks as they arise.

First, it would be important to Amend the OSS RBA regulations to include a national security risk assessment layer for high-risk sectors and ownership thresholds would require both structural and procedural changes to the current licensing system. Presently, the OSS RBA evaluates business risks primarily from administrative, safety, environmental, and resource management perspectives, without explicit consideration of national security. To address this gap, the OSS RBA should be revised to explicitly flag sectors that are critical to national security such as energy, telecommunications, defense, financial services, and emerging technologies for enhanced scrutiny. This amendment would entail establishing clear criteria for what constitutes a national security risk, including setting specific foreign ownership thresholds (for example, requiring mandatory screening for any foreign investment exceeding 49% ownership in a strategic sector).

Moving on is the mandatory and voluntary filing regimes, under CFIUS certain transactions especially those involving critical technologies or substantial foreign government interests must be mandatorily notified, while others may be voluntarily submitted for review. This dual approach would ensures that the most sensitive investments are always scrutinized, while still allowing flexibility for

less risky deals. Indonesia could integrate a similar regime, requiring mandatory reporting for FDI in sectors like defense, energy, telecommunications, or other sectors considered important for the country's National Security interest and allowing voluntary filings for non-sensitive sectors.

In addition, knowing that CFIUS is composed of representatives from multiple agencies including Treasury, Defense, Homeland Security, Commerce, and others ensuring that all relevant perspectives are considered. For Indonesia, adopting a similar approach would mean establishing a national screening committee under the OSS RBA that brings together key ministries and agencies with sectoral and security expertise. This committee could include the Indonesian Investment Coordinating Board (BKPM) as the coordinating body, the Ministry of Defense for strategic and military considerations, the Financial Services Authority (OJK) for financial sector oversight, and sectoral regulators such as the Ministry of Energy and Mineral Resources or the Ministry of Communication and Information Technology, depending on the nature of the investment. Such a committee would be empowered to conduct holistic, case-by-case reviews of high-risk or strategic investments, drawing on intelligence and risk assessments from each participating agency.

The next thing Indonesia could consider to adopt towards its regulation is the CFIUS's mitigation agreements and proportional remedies. When CFIUS identifies a transaction that presents unresolved national security concerns, it may negotiate and impose a range of tailored mitigation measures with the involved parties before granting approval. For Indonesia, adopting a similar approach would mean moving beyond a binary approve or reject model in its OSS RBA system. By instituting mitigation agreements, Indonesian authorities could require foreign investors to implement specific safeguards such as data localization, local board representation, or limitations on access to strategic assets tailored to the risks identified in each transaction. This would allow Indonesia to manage national security concerns in a nuanced, proportionate manner, maintaining an open investment climate while ensuring that sensitive sectors and infrastructure remain protected.

Last but not least, Transparency, predictability, and clear investor guidance are critical components of an effective foreign investment screening regime, as exemplified by the U.S. Committee on Foreign Investment in the United States (CFIUS). CFIUS publishes annual reports detailing the number of reviews conducted, outcomes, and enforcement actions, which fosters public trust and investor confidence by providing insight into the regulatory process. Additionally, CFIUS issues public guidance documents that clarify the criteria used in reviews, timelines for decision-making, and procedural steps, helping investors understand expectations and reducing uncertainty. For Indonesia, enhancing the OSS RBA system with similar transparency measures would significantly improve the investment climate. Issuing clear, accessible guidelines on which sectors and transactions require screening, the criteria for national security risk assessments, and the procedural timeline would provide legal certainty and reduce regulatory ambiguity. Public reporting on screening outcomes, anonymized to protect sensitive information, would demonstrate the government's commitment to fair and consistent enforcement.

CONCLUSION

In conclusion, a comparative analysis of America's *CFIUS* regulatory framework and Indonesia's current *OSS RBA* system highlights the importance of integrating national security considerations into foreign investment screening without sacrificing investment openness. The U.S. experience demonstrates that a risk-based, sector-specific, and adaptive screening mechanism characterized by interagency coordination, clear criteria, transparency, and the use of mitigation agreements can effectively address national security threats while maintaining a favorable investment climate. For Indonesia, adopting similar best practices would mean establishing a dedicated, multi-

agency screening body, amending *OSS RBA* regulations to incorporate national security risk assessments for high-risk sectors, and providing clear guidance and predictable processes for investors. By learning from the U.S. model, Indonesia can strengthen its ability to safeguard strategic interests and critical infrastructure, enhance legal certainty, and continue to attract high-quality foreign direct investment in an increasingly complex global environment.

This study underscores the critical need for Indonesia to develop a robust foreign investment screening mechanism that balances economic openness with national security, drawing lessons from the U.S. *CFIUS* model. By integrating risk-based assessments, interagency coordination, and transparent procedures into its existing *OSS RBA* framework, Indonesia can better safeguard strategic sectors while maintaining its appeal to foreign investors. However, further research is needed to explore the geopolitical and economic implications of such adaptations, particularly in the context of Southeast Asia's evolving investment landscape. Future studies could employ quantitative methods to assess the potential impact of screening mechanisms on FDI inflows or conduct comparative analyses with other ASEAN nations to identify regional best practices. Additionally, research could investigate the role of emerging technologies, such as AI-driven risk assessment tools, in enhancing the efficiency and accuracy of investment screening processes. Addressing these gaps would provide policymakers with actionable insights to refine Indonesia's regulatory framework in alignment with both national security priorities and global economic trends.

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